

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JEKOW D OLIENY
Claimant

APPEAL NO. 12A-UI-04036-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPREHENSIVE SYSTEMS INC
Employer

**OC: 01/01/12
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Jekow Olieny, filed an appeal from a decision dated April 9, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. A hearing was scheduled originally on May 2, 2012, but shortly after the hearing started the claimant requested an interpreter for the Nur language. The hearing was postponed and Joseph Malual was retained to act as interpreter.

After a new notice was issued the hearing was held by telephone conference call on May 18, 2012. The claimant had provided a telephone number which was dialed at 10:05 a.m. and again at 10:08 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section prior to the close of the record. By the time the record was closed at 10:20 a.m. the appellant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The employer, Comprehensive Services, participated by QMRP Sara Mahnke. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jekow Olieny was employed by Comprehensive Systems from June 2 until December 5, 2011 as part-time direct support staff. At the time of hire he received copies of the employer's policies, procedures and rules of conduct, including harassment.

On September 7, 2011, his supervisor, Angel, gave him a warning about complaints from co-workers regarding harassment. He would text them constantly even when they indicated they wanted him to stop. The warning stated any further incidents of policy violation would lead to suspension or discharge.

On November 30, 2011, another employee, Taylor, notified Unit Manager Jennifer Thompson of problems with Mr. Olieny. She would go off shift as he was coming on and when they were doing the required bed checks together he would stand very close, even though she had asked him not to. He asked her to "friend" him on his Facebook page and after several texts and requests, she finally agreed. He wrote her letters, poems, and drew her a picture with "Hey, beautiful!" on it with "hearts and flowers."

He created another Facebook page then again pestered her to friend him on that page, which she did. He wrote very personal responses to her, calling her beautiful, asking her out, telling her was "going crazy thinking about real woman like you."

The employer investigated, reviewing the Facebook page, the letters, pictures and poems, the prior warning and an incident with another employee which came to light. He was discharged on December 5, 2011, by Program Director Carolyn Repp and QMRP Sara Mahnke.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The claimant had been advised his job was in jeopardy as a result of his violation of the sexual harassment policy. In spite of that warning he continued to act in an inappropriate manner with at least two other female co-workers, in spite of their requests for him to stop. The employer

has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and a violation of the duties and responsibilities the employer has the right to expect of an employee. The claimant is disqualified.

DECISION:

The representative's decision of April 9, 2012, reference 01, is affirmed. Jekow Olieny is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs